

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,)
W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA,)
et al.)
Plaintiffs,)
V.) No. 05-CV-329-GKF-SAJ
TYSON FOODS, INC., et al.,)
Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FEBRUARY 19, 2008

PRELIMINARY INJUNCTION HEARING

VOLUME I

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

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1 MR. BULLOCK: We're prepared to start opening
2 statement. General Edmondson will deliver for the plaintiff.

3 THE COURT: Very well. General, I've read the briefs,
4 so you needn't go through all of the legal issues, but you
5 certainly may make an opening statement, sir.

6 MR. EDMONDSON: Thank you, Your Honor. May it please
7 the Court, last Friday's Tulsa World quoted a spokesperson for
8 the Poultry Community Council Group, not unknown to the
9 defendants in this suit, as saying that Edmondson admits he
10 lacks evidence that poultry farmers have violated the laws or
11 caused pollution. If that were true, this hearing would be
12 very short indeed, but I think it's very apparent from spending
13 an hour on pretrial motions that this is not going to be a
14 short hearing.

15 On the contrary, our evidence over the next several
16 days will be that these defendants are and have been in
17 violation of federal law limiting the disposal of waste. Our
18 evidence will show that these defendants are and have been in
19 violation of black letter Oklahoma statutes providing that
20 land-applied poultry waste shall not enter the waters of the
21 state. Our evidence will show that these defendants are and
22 have been in violation of black letter federal and Oklahoma law
23 prohibiting pollution and contamination of ground and surface
24 waters. Our evidence will show that these defendants are and
25 have been in violation of regulations requiring that surface

1 application of poultry waste be limited to the needs of the
2 crops. Most importantly for the purpose of this hearing, our
3 evidence will show that these persistent and pervasive
4 violations of state and federal law have infested the rivers
5 and springs and wells of the Illinois River Watershed with
6 biologic pathogens that have created an imminent and
7 substantial threat to human health.

8 Three years ago, Your Honor, the State of Oklahoma
9 filed suit against these defendants alleging environmental
10 damage to the Illinois River watershed due to the excessive
11 surface application of poultry waste. This waste, consisting
12 of fecal matter, bedding and water, contains, among other
13 things, nitrogen and phosphorus and is an effective fertilizer
14 when properly used. We alleged then and still maintain that
15 the litter is being applied well in excess of the agronomic
16 needs of crops and that the resulting runoff from fields has
17 damaged the waters of the basin, including Lake Tenkiller.

18 Trial of the case-in-chief is scheduled next year.
19 However, in the course of preparation for that trial, we began
20 to develop data concerning the effects of this dumping on human
21 health. We feel that data is compelling and because of the
22 human health implications, it could not wait until next year.
23 We, therefore, are seeking this injunction. The legal
24 framework for this hearing is not complicated. It includes the
25 elements for the issuance of a preliminary injunction, the

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13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 FEBRUARY 20, 2008

15 PRELIMINARY INJUNCTION HEARING

16 VOLUME II

17
18 BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

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JOHN BERTON FISHER

RECROSS-EXAMINATION

BY MR. GEORGE

Q. Dr. Engel, have you ever spoken with anyone at George's as to why they might be moving poultry litter to the Delta?

A. I have not.

Q. Were you just speculating about why, one possible reason as to why that might be occurring?

A. Well, certainly the literature would all seem to indicate that, you know, you lose the economic value after you transport this more than a few tens of miles, including the Rausser-Dicks materials that you provided.

Q. You have no idea why they transferred it to the Delta, do you?

A. Well, most likely it's either because --

Q. Sir, do you know why they transferred it to the Delta?

A. I don't know exactly why George's does that.

MR. GEORGE: Okay, thank you.

THE COURT: You may step down. The plaintiff may call its next witness.

MR. NANCE: Your Honor, State would call Dr. Gordon Johnson.

GORDON VERNON JOHNSON

Called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

THE COURT: State your full name for the record,

1 conclusions.

2 A. Okay.

3 Q. The last sentence. These scientists, Dr. Sharpley
4 concluded -- it starts with applications. "Application of
5 litter based on the P index allows more management options --"

6 A. Just a minute now, where are you at?

7 Q. You can see it on the screen, she's blown it up for you.

8 A. I was trying to find it here.

9 Q. Do you see where it is on the screen, Dr. Johnson?

10 A. Yeah, I see it.

11 Q. Dr. Sharpley and others say, "Application of litter based
12 on the phosphorus index allows more management options than
13 applications based on a soil test P threshold. These studies
14 have provided evidence that the phosphorus index provides a
15 better assessment of phosphorus runoff than Mehlich III soil
16 test P, especially when litter P is added. That's what it
17 says, doesn't it?

18 A. Yes, and I agree wholeheartedly.

19 Q. All right, thank you. Now, in fact, Dr. Johnson, you
20 don't even believe poultry litter is a fertilizer. Isn't that
21 what I heard you say?

22 A. I said it's not a very good fertilizer, yes.

23 Q. Not a very good fertilizer?

24 A. No.

25 Q. But it is a fertilizer?

1 A. Well, it's a source of nutrients.

2 Q. Yes or no, it is a fertilizer?

3 A. And you could call it a fertilizer. It is not registered
4 as a fertilizer.

5 Q. And part of your affidavit, part of what Mr. Nance asked
6 you, you have the opinion that it doesn't qualify as a soil
7 amendment?

8 A. That's true.

9 Q. Let's look at Exhibit 18. This is OSU Production
10 Technology Publication PT 98.7. Do you see that?

11 A. I'm looking for it.

12 Q. It's on the screen, but I'll be glad to help you find it.
13 Who wrote this?

14 A. Yes.

15 Q. Who wrote this?

16 A. Dr. Hailin Zhang.

17 Q. Who is he?

18 A. He's the current extension soil nutrient management state
19 specialist for soil nutrients.

20 Q. He is the nutrient management specialist for the State of
21 Oklahoma?

22 A. That he is.

23 Q. Would you read aloud the first paragraph?

24 A. "Most people recognize the value of animal waste as a
25 plant nutrient source or soil amendment but the potential of

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WITNESS CALLED ON BEHALF OF PLAINTIFFS:

ROBERT SWAN LAWRENCE

Direct Examination by Mr. Edmondson..... 1162

1 Arkansas?

2 MR. RYAN: I'm not sure, Your Honor.

3 MR. GEORGE: Little Rock, Your Honor.

4 THE COURT: Does he not face the same concerns?

5 MR. GEORGE: I expect he's driving as opposed to
6 flying would be the distinction.

7 THE COURT: Is he here in the courtroom?

8 MR. GEORGE: He is. Your Honor.

9 THE COURT: Doctor, I take it you're driving? You
10 say, he is?

11 MR. GEORGE: It's Randy Young, actually the executive
12 director of the Arkansas National Resources Commission.

13 THE COURT: Yes, sir. Are you driving, sir?

14 MR. YOUNG: Yes, sir.

15 THE COURT: Doctor, you are flying?

16 DR. DUPONT: Flying.

17 THE COURT: What time is your flight, sir?

18 DR. DUPONT: It's not until tomorrow.

19 THE COURT: All right. Well, then let's take our
20 other witness first as set forth in the previous schedule.

21 MR. GEORGE: Thank you, Your Honor.

22 THE COURT: Yes, sir.

23 MR. GEORGE: Defendants call Randy Young.

24 JESSE RANDALL YOUNG

25 Called as a witness on behalf of the defendants, being first

1 duly sworn, testified as follows:

2 THE COURT: State your full name for the record,
3 please.

4 THE WITNESS: Jesse Randall Young.

5 THE COURT: Thank you. You may inquire.

6 DIRECT EXAMINATION

7 BY MR. GEORGE:

8 Q. Mr. Young, can you state your current place of employment?

9 A. I'm the executive director of the Arkansas Natural
10 Resources Commission.

11 Q. And how long have you been the executive director of the
12 Arkansas Natural Resources Commission, sir?

13 A. Since May of 1985.

14 Q. Okay. Did you work with the Department of Natural
15 Resources or perhaps its predecessor prior to them?

16 A. Yes.

17 Q. In what capacity?

18 A. I started in 1971 as an entry level engineer and became
19 the deputy director and chief engineer, I think, in 1976.

20 Q. Mr. Young, do you hold an engineering degree and
21 certification?

22 A. Yes.

23 Q. What particular area of engineering?

24 A. I have a bachelor of science in agricultural engineering
25 and a master of science in environmental engineering.

1 I could give you some specific numbers for '06 and '07. And in
2 those two years, I believe we have -- our conservation district
3 employees have -- the number escapes me momentarily. I'll see
4 if I can recall what it is but I think it's 1,995 were written
5 in those two years.

6 Q. Mr. Young, is there an inspection process by Arkansas
7 Natural Resources Commission to determine compliance with
8 plans?

9 A. We actually have an agreement with our -- between my
10 agency and our DEQ to provide inspection, not only of these dry
11 litter permit facilities but also the CAFO facilities. And our
12 conservation district technicians, in the agreement that my
13 agency has with them, we require them to do an inspection on
14 five percent of those permitted facilities annually. My
15 employees at DNR do some joint inspections with those
16 technicians so that we're satisfied that the inspections are
17 actually being done properly.

18 Q. Mr. Young, if an inspection discovers or reveals a
19 violation of the law, what's the process for correcting that
20 under the Arkansas regulatory program?

21 A. Our first objective is to get compliance with our Arkansas
22 laws. And we have instructed our conservation districts and
23 their technicians to use that as a priority, provide whatever
24 technical assistance is available to try to get compliance.
25 And if we simply can't get compliance in that manner, we have,

1 I think, appropriate authority to assess penalties. If we
2 think it's a direct violation of our state water quality
3 standards, the agreement we have with DEQ, we refer that matter
4 to them to take enforcement action on.

5 Q. Mr. Young, based upon the inspections that have been
6 performed and your own personal knowledge as well as
7 conversations with your staff members, are you aware of any
8 indication of widespread non-compliance in the State of
9 Arkansas with your regulatory program?

10 A. No. We've probably had more problem with compliance with
11 the registration part of it. I think we sent out something
12 like a hundred certified letters last year to people who had
13 previously registered, but did not last year. And I think we
14 got 90 percent of those complied just based on that. And we
15 had to resort to getting a local sheriff's deputy to actually
16 serve the papers on the other 10 or 11. I think we ended up
17 issuing -- entering into consent agreements with ten of those
18 and they were assessed a first tier penalty.

19 Q. What you are describing, as I understand it, is
20 registration issues; correct?

21 A. Yes.

22 Q. What about with respect to land application practices?
23 Are you aware of any evidence of widespread violation of the
24 Arkansas laws regarding litter application rates under the
25 regulatory program?

1 A. No, our experience has been we've received several phone
2 calls, primarily with concern about dust and odor issues. And
3 when we made the callers aware that under the law and our
4 regulations, they have to identify themselves and file a
5 notarized complaint, that has a chilling effect on the average
6 citizen, I guess, because most of those who called in with that
7 type of complaint didn't follow up. So the complaint didn't
8 rise to meet the standard for us to investigate it.

9 Q. Mr. --

10 A. We've since --

11 Q. I'm sorry?

12 A. We didn't log those calls. We've since started logging
13 those. But we did have, I think, four complaints from
14 individuals who identified themselves and submitted a notarized
15 letter that we followed up on. Two of those were complaints of
16 overapplication of chicken litter. And one of them was
17 application without a plan. And the fourth one was a suspected
18 water quality violation.

19 Q. Mr. Young, in each of those four instances, did the agency
20 take action to investigate the complaint and, if appropriate,
21 to pursue remedies?

22 A. Yes. They were all investigated by the conservation
23 district technicians as well as by my staff. Three of the four
24 were issued warning letters, which is what's called for under
25 our regulations for a first violation. Plus we scheduled a

1 Mr. Robinson to take?

2 MR. GEORGE: I think Mr. Robinson, 30 minutes.

3 THE COURT: All right. Well, let's see how quickly we
4 can get the first witness up and down.

5 MR. BULLOCK: If they need to change the order for
6 Dr. DuPont, I mean, if that's a request, I said I would agree
7 to it if that was their request, if they need an accommodation
8 there, Judge.

9 MR. GEORGE: We call Patrick Pilkington. And just so
10 the Court and counsel know, our plan would be to call Patrick
11 Pilkington and then Mr. Robinson after that.

12 THE COURT: Thank you.

13 MR. GEORGE: Then hopefully if things go well, get
14 Dr. DuPont up and down. If not, do him first thing in the
15 morning.

16 THE COURT: Yes, sir.

17 PATRICK MARTIN PILKINGTON

18 Called as a witness on behalf of the defendants, being first
19 duly sworn, testified as follows:

20 THE COURT: State your full name for the record,
21 please.

22 THE WITNESS: Patrick Martin Pilkington.

23 THE COURT: Mr. George.

24 MR. GEORGE: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 contracts will be either three or seven years in duration, the
2 only exception being if a grower has asked for some reason to
3 have a lesser duration contract.

4 Q. Dr. Pilkington, is there a competitive market for the
5 services of contract growers or do they always stay with the
6 first integrator they contracted with?

7 A. There is a competitive market. They routinely switch.

8 Q. Are you aware of instances in northeast Oklahoma and
9 northwest Arkansas of contract growers switching from one
10 company to another?

11 A. Yes.

12 Q. Sir, do contract growers actually purchase birds from
13 Tyson and then sell them back at the end of the flock?

14 A. No, we retain ownership at all times.

15 Q. Who owns the land or the real property where poultry
16 houses used by contract growers to raise poultry are located?

17 A. The contract grower.

18 Q. Does Tyson pay for or finance the construction of poultry
19 houses used by contract growers?

20 A. No, the growers secure their own financing.

21 Q. Are you aware that some contract growers in northeast
22 Oklahoma and northwest Arkansas also have litter storage
23 facilities on their properties?

24 A. Yes.

25 Q. And who pays for the construction of those litter storage

1 facilities?

2 A. The grower.

3 Q. Who pays for the maintenance of poultry houses located on
4 contract growers' properties?

5 A. The contract grower.

6 Q. Who pays the utilities such as water, sewer, gas, electric
7 required to operate poultry houses on contract grower
8 properties?

9 A. The contract grower.

10 Q. Other than the actual physical barn or poultry house, is
11 there any other equipment that a contract grower needs to raise
12 poultry?

13 A. Well, they have to outfit that barn, so they'll have
14 waterers, feeders, fans, hoppers and the like so, yes.

15 Q. And as between the integrator such as Tyson and the
16 contract grower, who buys that equipment?

17 A. The contract grower.

18 Q. Who supplies the labor needed to operate a poultry farm?

19 A. The grower does.

20 Q. Are you aware, sir, of instances in which contract growers
21 actually hire third parties to provide labor?

22 A. I would say that's actually very common.

23 Q. When that occurs, who pays that person's wages, is it the
24 contract grower or the integrator?

25 A. The contract grower does.

1 Q. Sir, where do contract growers get the feed that is given
2 to the birds?

3 A. Tyson delivers that to the farm.

4 Q. Why doesn't Tyson let contract growers select and purchase
5 their own feed from whatever source?

6 A. Well, I don't think we've ever been asked to do that. I
7 really don't think a grower would want that. Outside of that,
8 I guess there are a couple of reasons. One, there are some
9 regulations around, mainly through packers and stockyards, that
10 growers that ultimately settle in a competitive fashion, which
11 these typically do, have to be treated similarly. So we have
12 to ensure that the feed that is going to those farms is
13 consistent, say, from grower A to grower B, so that's certainly
14 one reason. Also there's some regulations around FDA and/or
15 USDA that stipulate that certain things that go in the feed are
16 known and controlled and so that's why we provide that feed.

17 Q. Dr. Pilkington, the Judge has heard about something
18 referred to as bedding that's used in poultry houses. Are you
19 familiar with that term?

20 A. Yes.

21 Q. And what is bedding?

22 A. Normally -- in this area most of the time that will either
23 be wood shavings or very commonly rice hulls. And it's put
24 down before birds are delivered to a farm as the surface that
25 they'll be walking on and bedding down in.

1 Q. Does Tyson provide contract growers with bedding or
2 purchase it on their behalf?

3 A. No, they secure that.

4 Q. Dr. Pilkington, there's been some testimony in this case
5 about a group of individuals referred to as either fieldmen or
6 service techs. Are you familiar with those positions?

7 A. Yes, I am.

8 Q. What role, if any, do service techs or fieldmen play in
9 the process of raising poultry on contract growers' farms?

10 A. Well, they really don't raise poultry on the farms. What
11 they do commonly is -- let's say on average they'll be at a
12 farm once a week. While they're there, they're checking on the
13 welfare of the birds, they're making sure that there is, in
14 fact, feed, sufficient feed to make it until the next delivery
15 is supposed to come and generally looking at the conditions of
16 management on the farm. And if a grower happens to be there,
17 offering any advice or any answers to questions they may have.

18 Q. You use the term advice, give me some examples of the type
19 of advice that might be given by a service tech or fieldman to
20 a contract grower.

21 A. One might be -- it's fairly simplistic, but the height of
22 the feeders or the waterers, maybe some advice on how much
23 ventilation to either increase or decrease, when birds should
24 be turned out into the full house because they start in just
25 half the house. There's usually a curtain dropped halfway, so

1 at what age they might be released. I guess those are some
2 good examples.

3 Q. Dr. Pilkington, do you have an understanding of what
4 contract growers generally do with litter cleaned out of their
5 houses in northeast Oklahoma and northwest Arkansas?

6 A. Yes.

7 Q. And what is your understanding of what occurs?

8 A. In general, they either use it as fertilizer or sell it to
9 another party.

10 Q. Dr. Pilkington, if a contract grower also raises cattle or
11 has hay pastures where they are producing the hay in addition
12 to raising poultry, do the companies or their service techs
13 give advice or suggestions to contract growers about those
14 operations, cattle operations in particular?

15 A. No, our service techs, I mean, that's really not -- we're
16 not in the business to raise hay or raise cows so, no.

17 Q. Dr. Pilkington, does Tyson spread or land apply litter in
18 the Illinois River Watershed?

19 A. No.

20 Q. How many litter spreading trucks does Tyson Foods own?

21 A. None.

22 Q. Do the companies or service techs monitor or give advice
23 on the land application of poultry litter?

24 A. No, the -- our contract stipulates that the regulations
25 will be followed, but outside of that, there is not advice

1 given, no.

2 Q. Does Tyson audit contract growers for compliance with the
3 laws?

4 A. No, there is no audit.

5 Q. Okay. Why not?

6 A. Well, again, our contract really lays out what our
7 expectations are or actually the expectations of both parties
8 in that contract when it comes to regulations around -- well,
9 around, in this case specifically poultry litter. What we are
10 there to do is to see over the efficient growth of the birds.
11 And as long as they're following the terms of the contract,
12 that's not why we're there.

13 Q. Does Tyson mandate or require poultry farmers to clean out
14 litter on a regular schedule?

15 A. No, they typically will clean out when they have a need.
16 And often that will correlate or correspond, excuse me, to when
17 they want to fertilize certain fields.

18 Q. When a contract grower has had his house cleaned out and
19 he decides to sell his poultry litter to a third party, does
20 Tyson Foods receive any of the proceeds of that sale?

21 A. No.

22 Q. Does Tyson tell poultry growers in the watershed where to
23 land apply poultry litter?

24 A. No.

25 Q. Does Tyson tell contract growers or third parties in the

1 watershed when to spread poultry litter?

2 MR. GARREN: Judge, I've been fairly lenient, but
3 these are very leading questions. I think they can be asked as
4 to when or where.

5 THE COURT: With regard to that last question, I don't
6 believe it's leading. Overruled. Go ahead.

7 MR. GEORGE: Thank you, Your Honor.

8 Q. (By Mr. George) Do you recall the question,
9 Dr. Pilkington?

10 A. No, I don't.

11 Q. Does Tyson tell poultry growers or third parties in the
12 watershed when to spread poultry litter?

13 A. No.

14 Q. Does Tyson Foods receive notification of the locations and
15 amounts where poultry litter by contract growers or third
16 parties may be applied?

17 A. No.

18 Q. Dr. Pilkington, have you or your family spent much time in
19 the Illinois River Watershed?

20 A. We've spent some time. I've fished the Illinois River
21 before. In terms of my family, I have -- part of my children,
22 my older nine-year-old twins were at New Life Ranch last year.
23 They're signed up to go again this year. So, yes, we've spent
24 time in it.

25 Q. You mentioned that you fished, did you say the Illinois

1 THE COURT: All right. Exhibits 354, 55, 56, 57, 58,
2 60 and 363, any objection?

3 MR. GEORGE: No objection, Your Honor.

4 THE COURT: Those exhibits are admitted.

5 RANDALL WRIGHT ROBINSON

6 Called as a witness on behalf of the defendants, being first
7 duly sworn, testified as follows:

8 THE COURT: State your full name for the record,
9 please.

10 MR. RYAN: Mr. Robinson, the Judge is talking to you.

11 THE COURT: I'm sorry. State your full name for the
12 record, please.

13 THE WITNESS: Randall Wright Robinson.

14 THE COURT: Thank you.

15 MR. RYAN: Thank you, Your Honor.

16 THE COURT: Mr. Ryan.

17 DIRECT EXAMINATION

18 BY MR. RYAN:

19 Q. Mr. Robinson, where do you live?

20 A. Fayetteville, Arkansas.

21 Q. About how far out of Fayetteville do you live?

22 A. About 15 mile.

23 Q. How close are you to the Oklahoma line?

24 A. Probably five or six miles.

25 Q. Are you a family man?

1 A. Oh, almost 50 years.

2 Q. Tell His Honor what you do for a living.

3 A. Raise chickens and cows.

4 Q. Could you go into a little more detail about what you do?
5 Okay. How many chickens do you grow at one time?

6 A. 120,000.

7 Q. All right. Do you have houses, what are called poultry
8 houses?

9 A. Yes.

10 Q. How many of those do you have?

11 A. Six.

12 Q. Do you have land?

13 A. Yes.

14 Q. How much land do you have?

15 A. I've got about 200 acres of my own and I rent about 200
16 acres.

17 Q. Altogether do you grow on 400 acres?

18 A. Yes.

19 Q. What do you grow?

20 A. Hay and pasture.

21 Q. How many head of cattle do you run?

22 A. Around 200 cows.

23 Q. Is it a cow-calf operation?

24 A. Yes.

25 Q. About how many cows do you sell every year?

1 A. 150 to 180.

2 Q. Is your operation, your chicken operation and your farming
3 operation and your ranching operation, do they go together?

4 A. Yeah.

5 Q. And if so, how do they work together?

6 A. Well, we use the chicken litter for fertilizer.

7 Q. Go ahead. Then that fertilizes what?

8 A. Fertilizes the pasture and the hay ground and we can run
9 more cattle.

10 Q. All right. If the cost of poultry operations increases
11 for some reason, how does that impact you?

12 A. You mean the cost of my producing poultry?

13 Q. Yes.

14 A. Well, I just make less money.

15 Q. Now, do you have a contract with Tyson?

16 A. Yes.

17 Q. How long have you been a contract grower for Tyson?

18 A. Ten or eleven years.

19 Q. There was some testimony from the prior witness about a
20 standard form contract. Were you able to hear that from where
21 you were?

22 A. Yes.

23 Q. In your own terms, is your contract you signed with Tyson
24 a standard form contract?

25 A. Just a standard contract.

1 THE COURT: All right. Exhibits 354, 55, 56, 57, 58,
2 60 and 363, any objection?

3 MR. GEORGE: No objection, Your Honor.

4 THE COURT: Those exhibits are admitted.

5 RANDALL WRIGHT ROBINSON

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15 MR. RYAN: Thank you, Your Honor.

16 THE COURT: Mr. Ryan.

17 DIRECT EXAMINATION

18 BY MR. RYAN:

19 Q. Mr. Robinson, where do you live?

20 A. Fayetteville, Arkansas.

21 Q. About how far out of Fayetteville do you live?

22 A. About 15 mile.

23 Q. How close are you to the Oklahoma line?

24 A. Probably five or six miles.

25 Q. Are you a family man?

1 A. Oh, supposedly weekly, but that's not -- it's not really a
2 set deal. Sometimes they won't be out there for two or three
3 weeks.

4 Q. When they come out there, do you always talk to them when
5 they come?

6 A. Well, if we're there, but not always, no.

7 Q. When you are there and the man from Tyson comes out, what
8 do you talk about in general?

9 A. Oh, he'll look in on -- open the door of the chicken
10 houses and look at the mortality chart. And then we'll usually
11 talk about cows or grandkids or something like that.

12 Q. How much time do you spend with the fieldman talking about
13 the chickens when he comes out on average?

14 A. Fifteen to 30 minutes.

15 Q. What kind of things other than the fact that some birds
16 have died, I guess that's what you meant by mortality rate?

17 A. Yeah, I mean, that's normal. You've got mortality.

18 Q. Right. Other than talking about the mortality rate, what
19 else, what other kinds of things do you talk to him about?

20 A. Oh, we might ask him to look in and see how they look.
21 And other than that, you know, he'll stick his head in there
22 and say they look all right.

23 Q. Now, do you have somebody that helps out on your farm?

24 A. Yes.

25 Q. Did you hire this person?

1 A. Yes.

2 Q. Has anybody but you got the ability to fire them?

3 A. No.

4 Q. I mean excluding your wife?

5 A. Well, she does.

6 Q. All right. From the standpoint of who gives this man or
7 woman, whoever it is, this worker, who tells them what to do
8 every day?

9 A. Me or my wife.

10 Q. Does Tyson ever give him instructions, him or her
11 instructions?

12 A. Not that I know of.

13 Q. Have you ever seen or observed that?

14 A. No.

15 Q. Now, let's talk about poultry litter. Were you in the
16 back of the courtroom when Dr. Lawrence testified this morning?

17 A. Yes.

18 Q. I hope what I'm stating this correct, but I believe that
19 he said that he's familiar with the fact that litter is applied
20 an inch or so deep on the ground. From what you know and, of
21 course, you've lived here most of your life, is that an
22 accurate statement?

23 A. No.

24 MR. HAMMONS: Objection, Your Honor. I'm sorry, Mr.
25 Ryan, but I believe that's a mischaracterization of Dr.

1 Lawrence's testimony.

2 THE COURT: Overruled.

3 Q. (By Mr. Ryan) Tell us the thickness which poultry litter
4 is after it's been applied on the ground.

5 A. Oh, it will be -- it will just be a skiff -- I mean, the
6 ground won't be covered with it. It will just be a skiff of
7 it.

8 Q. A skiff is like a what?

9 A. Like a real light snow.

10 Q. Fair enough. Is that how you apply it on your property?

11 A. Yes.

12 Q. Have you ever seen anybody apply it anywhere near an inch
13 thick?

14 A. No.

15 Q. I think maybe you've already answered this question, but
16 the chicken litter that is produced in your poultry houses, do
17 you sell any of it?

18 A. I sell a little bit, but I use most of it myself.

19 Q. About how much of it do you sell?

20 A. Oh, maybe 20 or 30 loads a year maybe, not very much.

21 Q. Is there a market for poultry litter?

22 A. Oh, yeah.

23 Q. How much does it sell for?

24 A. I can sell it in my houses without me cleaning it for
25 anywhere from 5 to \$10 a ton. I can clean it myself and haul

1 it and spread it and get about \$100 a truck load for it.

2 Q. Who makes the decision with respect to when you apply the
3 chicken litter in your farming operation?

4 A. I do.

5 Q. And who makes the decision as to how it's applied?

6 A. I do.

7 Q. In terms of how much, who has the say-so on that?

8 A. The Natural Resources Commission in Arkansas.

9 Q. We'll talk about that in a moment. Who makes the decision
10 whether you sell it or whether you apply it to your land?

11 A. I do.

12 Q. Is the topic of poultry litter, the how, when, where and
13 whatnot, ever discussed between you and the Tyson fieldman?

14 A. No.

15 Q. Let's talk about these Arkansas regulations. The Court
16 has heard a little bit about it, but do you recall when the
17 State of Arkansas passed some legislation regarding application
18 of poultry litter?

19 A. Do I recall when?

20 Q. Yeah, when they did that about?

21 A. Five or six years ago, something like that.

22 Q. And what is your understanding of what it requires of you?

23 A. Well, I'm supposed to follow their recommendations on what
24 they say I can put.

25 Q. So let's take the last time before you applied poultry

1 Q. Do you own the litter, the poultry litter?

2 A. Well, yes.

3 Q. Is that important to your operations?

4 A. Yes.

5 Q. Has it always been that way?

6 A. Yes.

7 Q. Now, you said you could tell -- and I want to make sure I
8 understood this. You said you could tell by the way in which
9 you applied the poultry litter whether it was working, whether
10 it was working as a fertilizer. And I'd just like to
11 understand better how you know it's working. You say you see
12 it can grow better, but why don't you apply it everywhere to
13 where it grows evenly everywhere?

14 A. Well, it just, it don't spread perfectly evenly. Right
15 behind your spreader, it will be a little bit heavier than it
16 will out to the sides. And right where your spreader runs, the
17 grass will be a little bit heavier.

18 Q. Is a spreader a vehicle that you pull behind your truck?

19 A. No, I have spreader beds on trucks.

20 Q. All right. And do you make circular -- when you are going
21 around the field, do you make circular passes?

22 A. Yes.

23 Q. So are there corners that the spreader won't put down
24 poultry litter?

25 A. Yes.

1 MR. RYAN: That's all I have, Your Honor. Thank you.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. HAMMONS:

5 Q. May it please the Court. Good afternoon, Mr. Robinson.
6 Trevor Hammons for the State of Oklahoma. You said you have
7 six poultry houses; is that correct?

8 A. Yes.

9 Q. You do own the houses?

10 A. Yes.

11 Q. Are they currently paid for or do you still owe on them?

12 A. I still owe on it.

13 Q. Okay. How many birds per house do you have?

14 A. Around 20,000.

15 Q. How many flocks per year do you have?

16 A. Five and a half.

17 Q. Five and a half. Will you have a flock in each house or
18 does it rotate or does it just depend?

19 A. You mean are they all the same age, do they go in and out
20 the same?

21 Q. Yes, sir.

22 A. They all go in and out at the same time.

23 Q. So you're going to have 120,000 chicks of the same age at
24 one time?

25 A. Yes.

1 Q. Have you attended any other educational or informational
2 type courses regarding poultry litter application?

3 A. Not that I remember.

4 Q. Has Tyson given you any guidance or instructions regarding
5 the disposal of poultry litter?

6 A. Nothing except that I just have to follow the local and
7 state laws.

8 Q. Does Tyson ever tell you to clean out your houses?

9 A. They never have.

10 Q. How often do you clean out your houses?

11 A. One to -- anywhere from one to three years.

12 Q. Do you cake out?

13 A. Yes.

14 Q. What does cake out mean, sir?

15 A. Well, you take out the wet cake litter off the top, and it
16 leaves the dry litter in the houses.

17 Q. What do you do with that wet cake litter?

18 A. I have a big barn I put it in and then eventually I'll
19 spread it.

20 Q. Okay. So you clean out -- you don't clean out between
21 flocks; is that correct?

22 A. Not a complete clean out, no.

23 Q. You will do a complete clean out maybe once every three
24 years you said?

25 A. Anywhere from one to three years.

1 Q. After you take that -- you do a full clean out or the
2 caking out of the material of the poultry litter, is that
3 material still used in the process of growing chickens?

4 A. I don't understand.

5 Q. The stuff that you take out of the house of poultry
6 litter, do you need that material to raise chickens at the
7 point that you take it out of the house?

8 A. No.

9 Q. You testified, sir, that you land apply; correct?

10 A. Yes.

11 Q. And you also sell some; is that correct?

12 A. Yeah, a little bit.

13 Q. And you apply on your land; is that correct?

14 A. Yes.

15 Q. Do you ever give it away to any of your neighbors?

16 A. No.

17 Q. And you do have an animal waste management plan; is that
18 correct?

19 A. Yes.

20 Q. When did you first get an animal waste management plan,
21 sir?

22 A. I think I got my first one a little over five years ago.

23 Q. Okay. And do you take a soil test, is that -- let me
24 strike that. Does that animal waste management plan require
25 you to take a soil test?

1 your field?

2 A. All that I can legally apply to, yes.

3 Q. What is legally apply to?

4 A. Well, you've got a buffer zone. You've got to stay away
5 from property lines and creeks. And if it's too steep, you're
6 not supposed to spread on it.

7 Q. Okay. Why do you sell it?

8 A. Well, I usually sell it to a friend or something and I
9 just sell it to be a friend usually.

10 Q. Is it because you can't use it on your property?

11 A. No.

12 Q. And you testified you may give it to a friend. Have you
13 heard of BMPs?

14 A. Yes.

15 Q. Do you sell it to them?

16 A. I never have.

17 Q. Do you know where the litter goes that you do sell?

18 A. Yes.

19 Q. Where does it go, sir?

20 A. Well, it will go on another farm because I spread it. I
21 mean, I sell it and spread it both.

22 Q. So you actually will sell it to somebody and go to
23 their -- do you haul it yourself to that other farm?

24 A. Yes.

25 Q. And then you spread it on somebody else's field; is that

1 correct?

2 A. Yes.

3 Q. Do you see -- before you spread it, do you look at their
4 soil test or their animal waste management plan?

5 A. Yes.

6 Q. And you apply it consistent with that animal waste
7 management plan?

8 A. Yes.

9 Q. Okay. Does it stay -- how far do you go?

10 A. What do you mean?

11 Q. Well, if you're going to sell it, do you go to eastern
12 Arkansas?

13 A. Oh, no. It will be close, within five miles.

14 Q. Do you ever go into Oklahoma to apply it?

15 A. No.

16 Q. It's always in Arkansas. Mr. Ryan talked a little bit
17 about this chart that he drew up here. How much commercial
18 fertilizer have you bought in the last five years?

19 A. None.

20 Q. How much have you bought in the last ten years?

21 A. None.

22 Q. Okay. How do you know how much commercial fertilizer
23 costs?

24 A. Well, from things I've read and things I've heard.

25 Q. But you don't know what it's selling for at the local

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WITNESSES CALLED ON BEHALF OF DEFENDANTS:

PETER JAFFE

Direct Examination by Mr. McDaniel..... 1704

1 MR. LENNINGTON: No, it was something I came across in
2 my preparation for Dr. Jaffe.

3 THE COURT: All right. Well, it's really not part of
4 this stipulation. I don't believe he had ever seen it;
5 correct? It wasn't part of his considered materials?

6 MR. MCDANIEL: That's my understanding.

7 THE COURT: No, we'll decline to admit 480. It's new
8 material, not subject to the stipulation. Mr. McDaniel.

9 MR. MCDANIEL: Your Honor, with the consent of
10 plaintiffs' counsel, we juggled our schedule a little bit to
11 try to satisfy some travel plans. So with no objection from
12 the Court, we would like to go with Dr. Coale, then Dr. Myoda.

13 THE COURT: Very well.

14 MR. MCDANIEL: May we proceed?

15 THE COURT: You may.

16 MR. MCDANIEL: Defendants call Dr. Frank Coale.

17 FRANK J. COALE

18 Called as a witness on behalf of the defendants, being first
19 duly sworn, testified as follows:

20 THE COURT: Would you state your full name for the
21 record, please.

22 THE WITNESS: My name is Frank J. Coale.

23 THE COURT: Thank you. Mr. McDaniel, you may inquire.

24 MR. MCDANIEL: Thank you, Your Honor. And just as I
25 did with Dr. Jaffe, I'd like to address the exhibits we'll use

1 commonly referred to as poultry litter?

2 A. Yes.

3 Q. To what extent has your research and study dealt with the
4 management of poultry litter?

5 A. I work with it quite a bit.

6 Q. The area where you conducted most of your research, is
7 that known as the Delmarva area?

8 A. I've done a lot of work on the Delmarva Peninsula which is
9 the coastal plain of Maryland, Virginia and Delaware.

10 Q. Is there significant poultry production in that region?

11 A. Yes, very large poultry production area.

12 Q. In that area is poultry litter used for fertilization of
13 crops or pasture?

14 A. Yes, it is.

15 Q. Dr. Coale, does -- in your opinion, does poultry litter
16 have beneficial uses in agriculture?

17 A. Yes, it does.

18 Q. Do we have a demonstrative exhibit to illustrate that
19 point? Show D 80, please. Tell us what Demonstrative 80 is,
20 Dr. Coale.

21 A. This demonstrative on the screen is a list of the nutrient
22 and soil amending properties of poultry litter.

23 Q. Now, the Court has heard multiple times discussions about
24 the macronutrients in poultry litter, so I don't think we need
25 to cover that again. Can you please explain briefly these

1 secondary nutrients, the micronutrients that are listed here?

2 A. Okay. The secondary nutrients are calcium, magnesium,
3 sulfur. They are nutrients that are essential for plants to
4 have access to, enable for them to grow and be productive. But
5 they're not utilized or needed in as large of quantity as the
6 macronutrients, that being nitrogen, phosphorus and potassium,
7 but nonetheless they are essential.

8 Q. Does that apply to the micronutrients?

9 A. Exactly. Micronutrients is the same story. They're
10 categorized in these broad categories simply by how large a
11 quantity they are needed by the plant. So these are essential
12 nutrients, just needed in smaller quantities.

13 Q. Would you briefly identify for the record the
14 micronutrients in poultry litter?

15 A. Iron, boron, magnesium, zinc, copper, molybdenum, chlorine
16 and sodium.

17 Q. You said magnesium.

18 A. Manganese. Excuse me, I misspoke if I said that.

19 Q. Thank you. You have a column over here that says soil
20 amending properties. Dr. Coale, does poultry litter qualify as
21 a soil amendment or soil conditioner?

22 A. Yes, it does.

23 Q. And would you identify for the Court what are the
24 properties commonly associated with poultry litter that can
25 amend or condition soil?

1 A. Well, if we worked on that list, increasing soil pH which
2 is the same as neutralizing soil acidity. That's the same
3 process you'd achieve by adding agricultural limestone to a
4 soil, neutralizing soil acidity. Adding organic matter to the
5 soil and improve soil tilth which is the workability or the
6 structure, if you will, of the soil. As you increase organic
7 matter, you improve the water retention capacity of the soil
8 and promote microbial activity. It promotes aggregation of
9 soil particles, that's simply how the soil particles stick
10 together in larger units which is a positive characteristic.
11 That characteristic promotes water infiltration. It promotes
12 macrofauna, as it says on the list. Those are like earthworms
13 and other larger animals that live in the soil. And porosity
14 which we spoke about earlier today, it helps improve porosity
15 of the soil.

16 Q. All right. Dr. Coale, if forage on a pasture does not
17 need any of the fertilizer nutrients in litter that are
18 identified on the left-hand side of this exhibit, does --
19 excuse me, can poultry litter use improve the soil by virtue of
20 these conditioning properties listed on the right-hand side of
21 the exhibit?

22 A. Yes, they can.

23 Q. Is it necessary for poultry litter to be tilled into the
24 soil in order for the soil to receive these beneficial changes
25 from litter?

1 A. No, it's not.

2 Q. Dr. Coale, are you familiar with grazing and haying
3 pasture systems such as those that are present in the Illinois
4 River Watershed?

5 A. Yes.

6 Q. What are the primary crops in this type of system?

7 A. Bermuda grass, tall fescue.

8 Q. Is the land application of poultry litter beneficial to
9 these pasture systems?

10 A. Yes, it is.

11 Q. Why?

12 A. Well, the primary benefit derived from poultry litter
13 application and what benefits the farmer in operating the
14 system is the nitrogen supplying capacity of the poultry
15 litter. Supplying nitrogen to the crop, which is probably the
16 element in most high demand by the crop, can be achieved from
17 poultry litter being applied to the pasture.

18 Q. In his opening statement, Mr. Ryan acknowledged that some
19 of the poultry operators have had poultry litter applied to
20 their pastures that are in excess of 65 STP. Dr. Coale, even
21 if the soil is at 65 soil test phosphorus, can poultry litter
22 still provide a benefit to the soil and the forage?

23 A. I assume we're talking about 65 STP as from the Oklahoma
24 full testing laboratory?

25 Q. Yes, OSU standard 65 STP.

1 A. Okay. I just want to make sure we've got the same number,
2 okay.

3 Q. So even if the soil is at OSU 65 STP, can poultry litter
4 still provide a benefit to the soil and the forage?

5 A. Yes, it can.

6 Q. Is there a point at which the application of poultry
7 litter will actually do harm to the soil or harm to the forage?

8 A. Under application rates commonly used, not that I'm aware
9 of.

10 Q. Now, plaintiffs have offered the proposition in this
11 hearing that land applying poultry litter on soils of 65 STP or
12 higher is not agricultural use, but is mere waste disposal.

13 Dr. Coale, does 65 STP define the line between agricultural use
14 of poultry litter and waste disposal?

15 A. I do not believe it does because it's only focusing on one
16 very small component, that would be the phosphorus component of
17 litter.

18 Q. Has the USDA Natural Resources Conservation Service
19 developed criteria for nutrient management?

20 A. Yes, they have.

21 Q. Is that what we call the Code 590?

22 A. Yes.

23 Q. Can you identify what the objectives are for the Code 590?

24 A. The Code 590 is designed to provide guidance for
25 application of nutrients to agricultural land, to assure that

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel,)
 4 W.A. DREW EDMONDSON, in his)
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 5 OF THE STATE OF OKLAHOMA,)
 et al.)
 6)
 Plaintiffs,)
 7)
 V.) No. 05-CV-329-GKF-SAJ
 8)
)
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)
 10 Defendants.)

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 13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 MARCH 11, 2008

15 PRELIMINARY INJUNCTION HEARING

16 VOLUME VIII

17
 18 BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

19
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WITNESSES CALLED ON BEHALF OF DEFENDANTS:

CHARLES BRYCE ANDREWS

Direct Examination by Mr. McDaniel 1948

1 A. I do disagree with their conclusions --

2 MS. WARD: Thank you.

3 A. For the reasons I outlined in my declaration.

4 MS. WARD: Thank you.

5 THE COURT: Let's take a recess.

6 MR. MCDANIEL: Your Honor, there will be no redirect.

7 THE COURT: Very well, you may be excused at this
8 point, sir. Thank you very much.

9 THE WITNESS: Thank you.

10 (Recess.)

11 THE COURT: Be seated please. Mr. Elrod.

12 MR. ELROD: Your Honor, we call Mr. John Littlefield
13 by deposition. His testimony will be 18.36.599 seconds in
14 length. And Mr. Littlefield is in the courtroom today and I
15 understand he will be quote, cross-examined, end quote, live.

16 MR. BULLOCK: A brief cross-examination live, Your
17 Honor.

18 THE COURT: Very well, 18 point some seconds; right?

19 MR. BULLOCK: I think we can beat that record.

20 MR. ELROD: It's 18.36.599 minutes.

21 THE COURT: You may proceed.

22 MR. BULLOCK: I want to get my five minutes back.

23 (Excepts of the videotaped deposition of John
24 Littlefield were played as follows:)

25 DIRECT EXAMINATION

1 Q. "Mr. Littlefield, my name is John Elrod and I represent
2 Simmons Foods in this matter, and I'm going to have a few
3 questions for you. We've not met before today, have we, sir?

4 A. "No, sir.

5 Q. "And would you tell me what your name and address is for
6 the record?

7 A. "John L. Littlefield, 38327 South 4370 Road, Adair,
8 Oklahoma 74330."

9 * * * * *

10 A. "I was only there about a year when this job came open in
11 1998 and I started with the Oklahoma Department of Agriculture
12 on a contract."

13 * * * * *

14 Q. "For what counties are you responsible?

15 A. "Counties?

16 Q. "Yes, sir.

17 A. "Mayes County, Rogers County, Craig County, Ottawa County,
18 and Delaware County, most of Delaware. There is a strip on the
19 north side of -- or the south side of 412 that I don't have in
20 Delaware County."

21 * * * * *

22 Q. "In terms of coverage for the entire Illinois River
23 Watershed on the Oklahoma side, that would be you and David
24 Berry?

25 A. "That's correct."

1 * * * * *

2 Q. "What are your job duties?

3 A. "Well, I'm a poultry inspector for those counties. I
4 don't know if I said Mayes County or not in that awhile ago."

5 * * * * *

6 Q. "How many growers are in the counties you work?

7 A. "I -- I think I have about 210. 205, 210.

8 Q. "Of that number, how many have in place phosphorus based
9 animal waste plans?"

10 * * * * *

11 A. "To the best of my recollection, they all do. They either
12 have a plan or they have a letter from the NRCS office stating
13 that they will work them up a plan. So they do have something
14 current in their file."

15 * * * * *

16 Q. "Do you get to know these people pretty well?

17 A. "Yes, sir, I do.

18 Q. "And for the most part are they cooperative with you?

19 A. "Yes, sir, they are.

20 Q. "Courteous?

21 A. "Yes, sir.

22 Q. "Have you had any problems with any hostility at any time
23 ever?

24 A. "Starting out, you know, it was a change and farmers are
25 pretty conservative and independent people.

1 Q. "Yes, sir."

2 * * * * *

3 Q. "Any bad actors out there?"

4 A. "You know, not many now, no. I can't -- I really don't
5 have one."

6 * * * * *

7 Q. "How many commercial applicators do you have operating in
8 your region?"

9 A. "I have 150, I imagine. Commercial?"

10 Q. "Yes, sir."

11 A. "No, that's a total of private and commercial.
12 Commercial, probably 30. I don't know, approximately 20 or 30."

13 Q. "Let me ask you about those 20 or 30 and how they operate,
14 if you know. Would it be more true that those people buy
15 litter and then resell litter and apply it as part of the
16 reselling process or do they simply act as the middleman and
17 transfer litter from one place to another? That was a very bad
18 question but --"

19 A. "No, I understand it. I think I understand it. In most
20 cases, I think, they buy the litter, get the litter from the
21 grower and they transport it, and sell it, and spread it."

22 Q. "Okay. So in most cases the commercial applicators are
23 buying and selling litter, buying it and reselling it?"

24 A. "That's true, I think."

25 * * * * *

1 precise, but I'd like to know whether it's 10 percent, or 50
2 percent or 90 percent.

3 A. "I -- it's pretty high, 70 percent or so, probably.

4 Q. "Okay.

5 A. "Maybe higher than that."

6 * * * * *

7 Q. "Do you think that based on your last nine years of
8 experience in the northeast Oklahoma, that most of the growers
9 are taking a responsible approach towards litter management?"

10 * * * * *

11 A. "Excuse me, ma'am. I think -- I think so. I think more
12 so now than they were early on, but yes, I think so.

13 Q. "Do you know of any growers in your area who you believe
14 have a malicious intent to harm the waters of the state of
15 Oklahoma?

16 A. "No, sir, I do not."

17 * * * * *

18 Q. "And these are the acts under which you operate?

19 A. "Yes, sir.

20 Q. "Look at 10-9.3. It should be the third page. It is true
21 that under the act in the ODAFF regs that one cannot construct
22 a poultry house in Oklahoma without first seeking to have it
23 registered with the Department of Agricultural?

24 A. "Yes, sir.

25 Q. "So it would be true that if the Department of Agriculture

1 in Oklahoma chose to -- chose that there were would be no new
2 house construction in Oklahoma it could do so?

3 A. "I don't know.

4 Q. "Has that issue ever been discussed between you and your
5 elders at ODAFF?

6 A. "No, sir.

7 Q. "There's never been any discussion that you've been
8 involved in to the effect that maybe we ought to just stop
9 issuing licenses for construction of new houses?

10 A. "No, sir, I don't remember hearing that."

11 * * * * *

12 Q. "Are you aware of any growers in your area of the state
13 who are discharging poultry wastes to the waters of the state
14 of Oklahoma?

15 A. "I'm not aware of any."

16 * * * * *

17 Q. "So as far as the Oklahoma's laws that relate to
18 management of poultry litter, you're the man on the ground
19 that's enforcing those laws out in the watersheds; is that a
20 correct statement?

21 A. "I -- I think so."

22 * * * * *

23 Q. "So I assume that you would agree that an animal waste
24 management plan is designed to protect the natural resources of
25 the state of Oklahoma; do you agree with that?

1 A. No, sir. I never hear anything.

2 MR. NANCE: Nothing further, Your Honor.

3 THE COURT: May this witness be excused?

4 MR. ELROD: I have nothing.

5 MR. NANCE: Nothing from us, sir.

6 THE COURT: Thank you. The defendants may call their
7 next witness.

8 MR. MCDANIEL: Your Honor, if it please the Court, Ms.
9 Longwell and Mr. Mirkes will read into the record some
10 deposition excerpts of some growers that have been deposed in
11 the action. And that's a total of about 20, 25 minutes?

12 MS. LONGWELL: It's closer to 30 but...

13 THE COURT: We will break it up.

14 MS. LONGWELL: Your Honor, Mr. Mirkes will be reading
15 the part, the answers that were given by the growers Joel Reed,
16 Jim Lance Pigeon, Steve Butler, Larry McGarry, W.A. Saunders
17 and Juana Loftin.

18 Deposition of Joel Reed on June 11th, 2007.

19 Q. "Let me ask you this way then. Did you negotiate any of
20 the terms that are written on your poultry growing operation
21 contract?

22 A. "No.

23 Q. "Was there ever a time when you really didn't want to be
24 responsible for the waste generated by the birds?

25 "MR. HIXON: Object to form.

1 A. "Well, I call it chicken litter or fertilizer. And no,
2 I've always wanted it.

3 Q. "Do each of the integrators own the birds that you care
4 for?

5 A. "Yes.

6 Q. "Who owns the dead birds when that occurs?

7 A. "I guess I do.

8 Q. "All right. Is it your responsibility to dispose of the
9 carcasses that result in the growing?

10 A. "Yes.

11 Q. "Do either of these integrators pick up the carcasses from
12 you?

13 A. "No.

14 Q. "What do you do with the carcasses?

15 A. "I incinerate them and compost.

16 Q. "Who determines when the birds are to be picked up from
17 your location after growing?

18 A. "I guess the integrator would."

19 MS. LONGWELL: Page 50 line 2.

20 Q. "So when they're delivered to you, you've not have any had
21 any choice in this kind of bird comes to you; is that correct?

22 A. "That's correct.

23 Q. "Who supplies all the feed to your farm for the birds?

24 A. "The integrator does.

25 Q. "Both of them?

1 A. "Yes.

2 Q. "Who delivers the feed to your farm?

3 A. "Simmons and George's.

4 Q. "Who supplies medication for the birds when in your care?

5 A. "The integrators.

6 Q. "Who supplies who supplies any vaccinations required for
7 the birds?

8 A. "The integrators.

9 Q. "Do you pay for any of the medication or vaccinations that
10 are administered to the birds?

11 A. "No.

12 Q. "Who supplies any veterinary services that you may require
13 for the birds?

14 A. "The integrators do.

15 Q. "Do each of the integrators supply you with a field
16 service rep or a service tech person?

17 A. Yes."

18 MS. LONGWELL: Page 59, line 11.

19 Q. "Compared to the time that you grew for George's and now
20 for Simmons, is there any real significant difference in the
21 way they operate as it pertains to your operation?

22 A. No."

23 MS. LONGWELL: Page 103, line 19.

24 Q. "What instructions or recommendation, if any, have you
25 ever received from Simmons or its representatives regarding the

1 spreading of poultry waste?

2 A. "None.

3 Q. "I'll ask you the same question as it relates to George's.
4 Have they given you any instructions or recommendations with
5 regard to spreading poultry waste?

6 A. "No. Just follow the regulations, rules and regulations."

7 MS. LONGWELL: The deposition Jim Lance Pigeon, dated
8 May 25th, 2007.

9 THE COURT: Will there be any counterdesignations with
10 respect to any of these?

11 MS. LONGWELL: They are included in, Your Honor.

12 MR. BULLOCK: Yes, Your Honor, we have already made
13 counterdesignations and they are reading those.

14 THE COURT: Okay. Good, thank you.

15 MR. HAMMONS: I'd also, I would like to point out,
16 Your Honor. Did you read 26, 16 through 19. I believe there's
17 one that you missed.

18 MS. LONGWELL: Which ones?

19 MR. HAMMONS: It's the counterdesignation for Joel
20 Reed. Excuse me. Disregard.

21 MS. LONGWELL: Okay.

22 THE CLERK: Did you say Higgins?

23 MS. LONGWELL: Pigeon. Jim Lance Pigeon.

24 Your Honor, page 46, line 8.

25 Q. "Does poultry waste produced from your barns ever go off

1 your property?

2 A. "Go off?

3 Q. "Does it leave your property?

4 A. "Yes, it does.

5 Q. "And when it does is it because you have sold it or given
6 it away; which?

7 A. "It's because I've sold it."

8 MS. LONGWELL: Page 52, line 1.

9 Q. "Generally speaking who has the day-to-day operation or
10 control of would your facility?

11 "MR. BOND: Object to form.

12 A. "Myself.

13 Q. "And has that changed at any time during the time you
14 started until the time of today?

15 A. "No, it has not."

16 MS. LONGWELL: Page 54, line 10.

17 Q. "Do the birds that Tyson delivers, are they owned by you
18 or Tyson?

19 "MR. WILLIAMS: Object to form.

20 A. "I believe the birds are owned by the integrator."

21 THE COURT: For the record the two proceeding
22 objections are overruled.

23 MS. LONGWELL: Do you want me to pause, Your Honor, as
24 we go through these when I hit an objection?

25 THE COURT: Well, to the extent that the objection is

1 THE COURT: "Any of your growing operation records."
2 Overruled.

3 A. "In my opinion I don't feel that they have the right to
4 inspect those records as long as I'm following what's required
5 of the law."

6 MS. LONGWELL: Page 174, line 15.

7 Q. "Let me try to clarify that. You own the poultry barns
8 that are on that farm?

9 A. "Yes.

10 Q. "You own the equipment that you use on that farm?

11 A. "Yes.

12 Q. "And is there a house on that farm?

13 A. "Yes.

14 Q. "Do you own that house?

15 A. "Yes."

16 MS. LONGWELL: Page 175 line 13.

17 Q. "Okay. I'm assuming that you generate an electricity bill
18 from poultry operation?

19 A. "Yes.

20 Q. "Who pays that electricity bill?

21 A. "I do.

22 Q. "And I think you testified before that you don't have any
23 employees that work on your farm?

24 A. "That's correct.

25 Q. "Okay. Have you ever had any employees work on your farm?

1 A. "I have had on very few occasions.

2 Q. "Okay. And on those occasions did you hire that person to
3 work on your farm?

4 A. "Yes.

5 Q. "Okay. So did you pay that person?

6 A. "Yes, I did.

7 Q. "Does Tyson offer you any benefits like health care and a
8 profit sharing plan, all that kind of stuff?

9 A. "No.

10 Q. "Do they have withhold any FICA or social security from
11 the check you get when your flock is sold?

12 A. "No.

13 Q. "You don't get paid by the hour do you?

14 A. "No.

15 Q. "From Tyson? Let me clarify that.

16 A. "No.

17 Q. "You're not paid a salary from Tyson, are you?

18 A. "No."

19 MS. LONGWELL: Page 178, line 6.

20 Q. "Does Tyson tell you when to cake-out your houses?

21 A. "No, they do not.

22 Q. "Does Tyson tell you when to clean out your houses?

23 A. "No, they do not.

24 Q. "Does Tyson tell you where to land apply poultry litter?

25 A. "No, they do not."

1 MS. LONGWELL: Page 182, line 17. And it's the second
2 sentence.

3 Q. "What I'm asking is when you were contracting with
4 Peterson Farms to grow chickens for Peterson Farms you were
5 ultimately responsible for the production on your farm?

6 A. "Yes.

7 "MR. GARREN: Object to the form as leading."

8 THE COURT: Sustained.

9 Q. "When you were growing for Peterson, did Petersen ever
10 tell you when or how to clean out your house, your houses?

11 A. "No, they did not.

12 Q. "Did they tell you when to apply your litter?

13 A. "No, they did not.

14 Q. "Or where to apply your litter?

15 A. "No.

16 Q. "Did they instruct you to sell your litter?

17 A. "No.

18 Q. "Did they instruct you you could not sell your litter?

19 A. "No."

20 MS. LONGWELL: The deposition of Steve Butler on April
21 26, 2007. Page 78, line 16.

22 Q. "All right. When you took over these complexes, did you
23 in fact sell 100 percent of all the litter or waste that's
24 produced from the barns from the 16 complexes?

25 A. Yes."

1 MS. LONGWELL: Page 82, line 13.

2 Q. "And you put it in there because it absorbs the moisture
3 from the urine and excrement that the birds excrete?

4 A. "That's correct.

5 Q. "So at some point in time it gets mixed together into a
6 combination of bedding material and the waste excreted from the
7 birds; correct?

8 A. "That would be correct."

9 MS. LONGWELL: Page 86, line 20.

10 Q. "All right, so that I'm clear. Have you ever given waste
11 away to somebody who land applied it on any of your land?

12 A. "Green Country Farms does not.

13 Q. "So all of the complexes that you operate at Green Country
14 since you have operated it from February of '04, there has been
15 no land application to any of those properties; is that
16 correct?

17 A. "To the best of my knowledge, no.

18 Q. "I mean land application meaning poultry waste land
19 application, not commercial fertilizer?

20 A. "Right.

21 Q. "You did give one comment about one guy might have used --

22 A. "And I'm not real clear on that. He asked permission. I
23 told him he could use commercial but not litter."

24 MS. LONGWELL: Page 104, line 18.

25 Q. "Did you make any proposals or suggestions to Tyson that

1 you didn't want to be responsible for the waste that's
2 generated by their birds in these complexes?

3 A. "Absolutely not.

4 Q. "Was that a consideration when you entered into this
5 agreement about what to do with the waste, poultry waste?

6 A. "Poultry litter was a consideration.

7 Q. "And what is that consideration?

8 A. "Well, you've got to take into account you don't -- you
9 don't know what the future was for litter. But to me it's a
10 commodity, I can selling it and make money."

11 MS. LONGWELL: Page 114, line 22.

12 Q. "And we see Raymond Tinney's name there as approved buyer,
13 don't we?

14 A. "Yes.

15 Q. "Where does he live or operate?

16 A. "Just outside of Checotah, Oklahoma.

17 Q. "So that's south. And so he's your main customer for the
18 disposition of the poultry waste generated at your complexes;
19 correct?

20 A. "He purchases the majority of our litter and then resells
21 it to his fertilizer -- He is a fertilizer, that's what he does
22 for a living.

23 Q. "Right.

24 A. "So he purchases our litter and then resells it in the
25 area down there."

1 MS. LONGWELL: Page 118, line 23.

2 Q. "Do you consider yourself an independent contractor doing
3 the work for Tyson, is that what --

4 "MR. WILLIAMS: Object to form."

5 THE COURT: Overruled.

6 A. "I'm definitely an independent. I mean I contract, raise
7 broilers for Tyson.

8 Q. "Okay. What, if any, encouragement or -- that's fine,
9 encouragement did you receive from Tyson to participate in the
10 grant projects for litter transport?

11 A. "Encouragement? Define what you mean by encouragement.

12 Q. "We'll, start back a little bit then. You indicated that
13 your first contact on the this was seeing the ads of BMP and
14 you made a phone call?

15 A. "Uh-huh.

16 Q. "Did Tyson or any of its representatives explain to you
17 that that project is out there, that grant money is available
18 and you need to get into it?

19 A. "Shortly after that I did have a conversation with some
20 folks from Tyson that said, yes, it's there and that would be
21 great.

22 Q. "Who was it that you talked to?

23 A. "It would be -- I know Steve Patrick. Steve Patrick is
24 who I talked to about that.

25 Q. "What's his position with Tyson?

1 A. "Yes.

2 Q. "And what was the reason for that?

3 A. "Well, I thought it was very unique when I got there to
4 see that many chicken houses and sage grass and worthless hay
5 growing everywhere and then as I got to doing my due diligence,
6 found out that Hudson never spread, Tyson never spread, and I
7 didn't want to start. I'm talking with Adair County right now,
8 though, about possibly going into a Bermuda deal."

9 MS. LONGWELL: Page 237, line 24.

10 Q. "Do you consider yourself a businessman, sir?

11 A. "I do.

12 Q. "And Green Country Farms is your business; is that right?

13 A. "That is my business.

14 Q. "How many employees does that business support?

15 A. "Approximately 45.

16 Q. "And you are responsible for paying the wages of those
17 employees?

18 A. "Yes, I am.

19 Q. "I assume that business, like many other businesses, has
20 debt associated with it; is that fair?

21 A. "Very much so.

22 Q. "And you and not Tyson are responsible for paying that
23 debt; correct?

24 A. "That's correct."

25 MS. LONGWELL: The deposition of Larry McGarrah, dated

1 them.

2 Now, with respect to mechanics. My understanding is
3 I've got tomorrow morning loaded up; right? So I'm starting at
4 1:30. I don't believe the I have anything else; right?

5 THE CLERK: We start at 1:30.

6 THE COURT: Generally, General, my approach is take as
7 much time as you dare. You know, people ask me on arguments to
8 a jury, opening statements to a jury. You know, take as much
9 time as you dare with that jury. At a certain point -- you
10 know, I've got plenty of work stacked up here, but keep me
11 interested. As I say, if I'm wrong in focusing, and I know
12 there are many more issues there, but for one reason or another
13 those two issues have piqued my curiosity. And help me out
14 here because I think everyone needs to go through the process
15 of whether or not the plaintiffs have to show every aspect here
16 to get what they are asking for. I don't know how much more
17 guidance I can give you.

18 MR. EDMONDSON: With those directions, Your Honor, we
19 would anticipate then starting with a half an hour and then
20 letting the defense respond an then close with a half an hour.

21 THE COURT: That would be great. That would be great.

22 MS. LONGWELL: Are you ready, Your Honor?

23 THE COURT: I am.

24 MS. LONGWELL: Deposition of Larry McGarrah, dated
25 June 27th, 2006. Page 56, line 7?

1 Q. "How did you decide to go into the poultry growing
2 business?

3 A. "Source of income. Just decided we needed the income and
4 we needed the fertilizer."

5 MS. LONGWELL: Page 58, line 8.

6 Q. "Well, was it your choice to keep all the poultry waste
7 generated from poultry barn?

8 A. "Yes."

9 MS. LONGWELL: Page 58, line 15.

10 Q. "In your contracts with Tyson have you ever negotiated
11 that you would keep or not keep the waste from your poultry
12 operation?

13 A. "No."

14 Q. "Have they at any time indicated they didn't want to you
15 keep the poultry waste?

16 "MR. BOND: Object to form."

17 THE COURT: Overruled.

18 A. "No."

19 MS. LONGWELL: Page 61 line 4.

20 Q. "All right. SO have you ever attempted to put your litter
21 in that, I'm calling it a broker arrangement, where you can
22 sell it?

23 A. "No."

24 Q. "It's been your intention to use it at all times on your
25 land?

1 A. "Yes."

2 MS. LONGWELL: Page 99, line 23.

3 Q. "Does the type of deal then give you any instructions on
4 how or where to apply poultry waste?

5 A. "No."

6 MS. LONGWELL: Page 100, line 1.

7 Q. "Has he ever in the past discussed with you how or where
8 you should apply poultry waste on your facility?

9 A. "No."

10 MS. LONGWELL: Page 128, line 3.

11 Q. "Do the service techs ever come in prior to a flock going
12 in to see that it's properly prepared and to accept a flock?

13 A. "Yes."

14 Q. "So they do that every time?

15 A. "Yes."

16 Q. "And for every barn?

17 A. "Yes."

18 MS. LONGWELL: Page 152, line 4.

19 Q. "Who supplies the -- who supplies the feed for your
20 poultry birds when you have them?

21 A. "Tyson."

22 MS. LONGWELL: Page 167, line 19:

23 Q. "The cost for soil and waste analysis tests, do you pay
24 for those?

25 A. "Yes."

1 A. "Well, I had to put in a water meter and a power failure
2 alarm.

3 Q. "You had to add that in order to get three-year contract
4 this time?

5 A. "Yes. And my houses had to be tight enough they could
6 pull as much wind speed through them and they had passed.

7 Q. "And who tested your house for that are purpose?

8 A. "The field men.

9 Q. "Okay. And so once these three things were confirmed,
10 that made you eligible then for this three-year contract?

11 A. "Yes."

12 MS. LONGWELL: The deposition W.A. Saunders, volume
13 one, dated October 23rd, 2006. Page 29, line 3.

14 Q. "What facts or reasons did you have for going into the
15 poultry growing operation business?

16 A. "To try and make any cow operation work better.

17 Q. "And how do you mean by that?

18 A. "By the fertilizer.

19 Q. "And tell me what --

20 A. "Poultry litter. I bought a piece of farmland that was
21 very poor, had been cleared, then left to go back to seed, had
22 never been taken care of. Fertility on it was little to none
23 and I was either going to have to put a tremendous amount of
24 commercial litter on it, commercial fertilizer or poultry
25 litter. With the number of acres I had, I could not afford the

1 commercial. Plus, I was working out and trying to support a
2 cow farm, and the chicken farm gave me a chance to stay at home
3 and make a living and improve my cow farm?

4 Q. "So you bought it in order to have the waste from the
5 poultry farm?

6 A. "As well as income from poultry farm, sure."

7 MS. LONGWELL: Page 43, line 8.

8 Q. "Who is considered to be in charge of the day-to-day
9 operation of the poultry growing portion of your business?

10 A. "I am."

11 MS. LONGWELL: Page 49, line 4.

12 Q. "All right. We talked earlier about -- I think you
13 referred to him earlier as a field rep or a field supervisor?

14 A. "Field man.

15 Q. "I want to use your term so we know who we're talking
16 about.

17 A. "He's the field man.

18 Q. "And tell me what is it that field man does as it relates
19 to you?

20 A. "He'll come in, check the feed bins for quantity. He'll
21 check around the house to make sure good housekeeping is kept,
22 brush is kept down. He'll look inside the houses to check
23 mortality, current mortality, what we keep on the records.
24 He'll look at our controller to see what environment is like.

25 Q. "A controller, what do you mean by that?

1 Q. "What efforts or actions does the integrator take in
2 monitoring or assisting you obtaining soil samples?

3 A. "None.

4 MR. MCDANIEL: Object to the form."

5 THE COURT: Overruled.

6 Q. "Does Peterson or its representatives assist or monitor
7 you in taking waste samples, poultry waste samples?

8 A. "No."

9 MS. LONGWELL: Page 178, line 16.

10 Q. "Talking about your residence, sir, what is the water
11 supply that you use for your personal use at the residence?

12 A. "A spring."

13 MS. LONGWELL: Volume two of the deposition of W.A.
14 Saunders, dated October 27, 2006. Page 236, line 21.

15 Q. "Who owns the live chickens that you raise?

16 A. "Mr. Peterson.

17 Q. "The company?

18 A. "Yes."

19 MS. LONGWELL: The deposition Juana Loftin, dated June
20 22nd, 2006. Page 93, line 14.

21 Q. "By the way, what are you are you paid for the litter
22 waste from your operation?

23 "MR. WILLIAMS: Object to the form."

24 THE COURT: Overruled.

25 A. "What do you mean?

1 Q. "The litter which is taken out of your barn, is to be
2 applied, what do you get made for that?

3 A. "Sometimes it's \$11. It varies. Sometimes it's \$11 a
4 truck, sometimes it's \$15, sometimes it's \$20.

5 Q. "What does Mr. Wofford pay you?

6 A. "That much. It varies. Sometimes it's \$11, sometimes
7 \$15, sometimes \$20.

8 Q. "How do you negotiate that with him?

9 A. "Well, if I'm in a big hurry to get those houses cleaned,
10 and like in July when I clean, you know, last year it was
11 getting late, it was late in the year and I couldn't get
12 anybody to take it, so he said he would take it. And I mean he
13 arranged to get somebody to clean my houses and I think he paid
14 me \$15 a load."

15 MS. LONGWELL: Page 97, line 6.

16 Q. "(By Mr. Bullock) How often does -- is it Mr. Wells from
17 the Simmons service tech? How often does though Mr. Wells to
18 the your operation?

19 A. "Well, once a week and sometimes he comes more than once a
20 week. Could be two times or three times or sometimes just once
21 a week.

22 Q. "How much time will he spend there when he comes?

23 A. "Lots of tie.

24 Q. "What types of things does he do while he's there?

25 A. "Different things. He checks everything, my water